

# **Kansas Underground Utility Damage Prevention Act**

*Statute Update*

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# Status of Regulation and Statute Review

- Statute last updated in 2018
  - An electric public utility shall not be considered an operator of any portion of an underground facility that is on another person's side of the point where ownership of the facility changes from the electric public utility to another person as determined by the electric public utility's rules and regulation, tariffs, service or membership agreement or other similar documents.
- Before that, last updated 2008

# KUUDPA Fundamental Problem

- Unlimited demand for locates with a set deadline for locate performance.
- Limited supply of locators to respond to demand for locates.

# KUUDPA Structural Problems

- 30% of locate requests are updates
  - Ticket life of 15 calendar days.
  - Late locates compresses digging time requiring update.
  - Updates affect availability of locators to meet demand.
  - Note: Permitted projects don't need to get updates. (still need to protect marks)

# Update Potential Remedies

- Requires Statute change.
  - Allow KCC to set the life of an active ticket.
  - Remove ticket life; just require marks to be present when digging (Missouri approach)
  - Extend ticket life to 30 days.
  - Let excavation start date float based on call center ticket volume. (more volume, longer wait times for locates)

# KUUDPA Structural Problems

- Whitelining is not widely adopted.
  - Provides locator with a clear path of area needing locates;
  - Most excavators want to show up and work rather than make a pre-job trip to lay whitelines.

# Whitelining Potential Remedies

- Statute requires whitelining if operator requires it.
- Make whitelining mandatory but allow a virtual whiteline to be done on an aerial map.
- Ticket must have valid means of contacting excavator and operators
- Use of ticket check should be required; and enforced to make sure it is used correctly.
- Allow KCC to establish whiteline rules in regulation or through order.

# KUUDPA Structural Problems

- Excessive updates or emergencies used as time management tool.
- Locates always available whenever excavation is needed;
- Minimizes responsibility of excavator to protect the marks.



# Excessive Update Potential Remedy

- Remove need for updates by eliminating ticket life;
- Extended ticket life to 30 days may minimize some updates;
- Allow operators to charge excavators for any update after the third one.
  - May just call in different ticket?
  - May result in more damages?

# Excessive Update Potential Remedy

- Pennsylvania Example
- It is not required to update your ticket every 10 business days on an active work site when:
  - The markings have been preserved
  - The equipment has not been moved off of the work site for more than 2 business days
  - You can request a facility owner to mark their facilities again if the previous markings have been compromised or eliminated on an active work site; a three business day notice is required
  - You can request a facility owner to mark their facilities again if the work did not begin within the original lawful start date; a three business day notice is required

# KUUDPA Structural Problems

- Trenchless excavation leads to facilities installed deeper than typical depth.

# Potential Remedies for Deep Lines

- If line is more than 4 feet deep, the locator has to provide an indication of depth, but not held responsible for accuracy of the depth.

# KUUDPA Structural Problems

- Excavators need more training on Reasonable care.
- Risk analysis to determine when to increase efforts taken in tolerance zone to avoid damage.

# Reasonable Care Responses

- potholed in two other areas of the jobsite but failed to pothole where they were going to be digging for the day. Assumed the utilities would stay the same elevation across the site.
- There was no excavating being done. All we were doing was removing a piece of existing concrete. We were not to even dig more than 8 inches deep
- they pot holed down on the marks themselves but failed to go the required 24" of either side of the paint marks. They did not find the gas service line and made the assumption that it was probably deeper than they would need to go
- Builder hired plumber who dug using builder's locates and disturbed the markings. Builder began to dig after marks were destroyed and hit gas line.

# Reasonable Care Includes

- Protecting marks;
- vacuum excavating;
- Looking at as built maps of buried structures and surface clues;
- Locating the line using excavator locate equipment;
- Hand digging;
- Backhoe and probe bar.

# Reasonable Care Includes

- Degree of effort depends on the risk of damage to the facility the excavator is looking for.



# KUUDPA Structural Problems

- Need for more widespread enforcement of statute and regulations.
- Better data collection and analysis to demonstrate KUUDPA effectiveness.
  - Mandatory damage reporting by excavator and operator.

# Enforcement Remedies

- KCC publish a penalty schedule for each violation;
- Assign a committee to evaluate allegations and make recommendations to the KCC for civil penalties.
- Require training as part of first offence
  - See Kansas811 online training manual  
<https://kansas811.dpa.training/index>
- All of the above can be done by the KCC with an order or with regulations.

# KUUDPA and Municipal Authority

- Municipals can address any of these problems with an ordinance– don't need a statute change, a KCC regulation or a KCC interpretation.